



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL
77 W. JACKSON BOULEVARD
CHICAGO, IL 60604

DATE: January 25, 2022

PREPARED BY: SA (b) (6), (b) (7)(C), (b) (7)(F)

CASE #: OI-CH-2021-AFD-0008

CROSS REFERENCE: Hotline # 2021-0183

TITLE: Minnesota Pollution Control Agency, St Paul, MN

CASE CLOSING REPORT

Subject(s)	Location	Other Data
Minnesota Pollution Control Agency	St. Paul, MN 55155	Bloomington: Lyndale Avenue Corridor

ALLEGATION:

On May 12, 2021, Special Agent (SA) (b) (6), (b) (7)(C), (b) (7)(F), U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), Office of Investigations, Eastern Region Field Office, initiated investigative activity pursuant email messages sent to the EPA OIG Hotline from (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) alleged Minnesota Pollution Control Agency (MPCA) applied for Superfund dollars to clean up the persistent contamination along the "Lyndale Ave Corridor", while previously covering up for the offender of the contamination prior to applying for the funds.

The Bloomington: Lyndale Avenue Corridor site was listed on the MPCA Permanent List of Priorities (PLP) in 2016. The site is currently managed under state of Minnesota Superfund Authorities. (b) (5)

FINDINGS:

On August 31, 2021, SA (b) (6), (b) (7)(C), (b) (7)(F) had a meeting with (b) (6), (b) (7)(C), with

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EPA's Site Assessment and Grants Section, Superfund & Emergency Management Division concerning the hotline complaint on Minnesota Pollution Control Agency's (MPCA) mishandling on the Lyndale Ave Corridor site. (b) (6), (b) (7)(C) provided following information:

It should be noted (b) (6), (b) (7)(C) was also on the call and (b) (6), (b) (7)(C) joined later.

1. The complaint is broad and ever evolving. (b) (6), (b) (7)(C) originally thought the complaint involved the Lyndale Ave Corridor, but as they did more digging, the complainant was referring to the Toro facility about a mile up the road.
2. Toro is currently being regulated by the Resource Conservation and Recovery Act (RCRA). (b) (5)
3. (b) (6), (b) (7)(C) provided the complainant an update in March 2021 concerning the information (b) (6), (b) (7)(C) provided. (b) (6), (b) (7)(C) has been communicating with the complainant via email.
4. The complainant is alleging Toro is the one responsible for the contamination at Lyndale Ave Corridor and MPCA is helping Toro cover up the contamination.
5. (b) (6), (b) (7)(C) had discussions with OIG and RCRA program contacts concerning the allegations. There has been follow-up with OIG (b) (6), (b) (7)(C) and made complaint information available to OIG. The RCRA program started working with OIG and created a SharePoint site to collaborate documents.
6. (b) (5)
7. (b) (5)
8. (b) (5)
9. (b) (5)
10. (b) (6), (b) (7)(C), (b) (5)

On January 4, 2022, Special Agent (SA) (b) (6), (b) (7)(C), (b) (7)(F), U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), Office of Investigations, Eastern Region Field Office, coordinated with (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) provided documents, which (b) (6), (b) (7)(C) alleged showed the


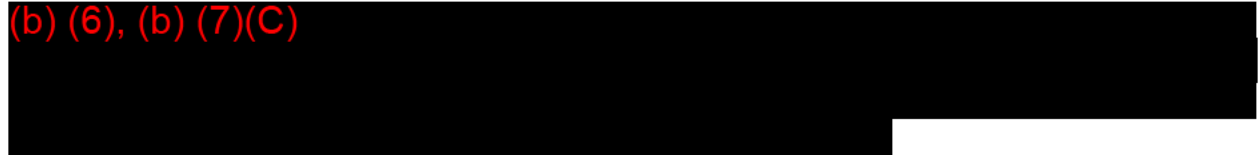
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uploaded it to a SharePoint folder. The scanned documents consisted of research completed along the Lyndale Corridor from 1989-2020 (contracted by the Minnesota Pollution Control Agency (MPCA)), documents pertaining to Toro's spill in 1996 and 2010, Toro building modifications, and various miscellaneous documents.

(b) (6), (b) (7)(C)



Further, in the documents received from (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) included a copy of a letter (b) (6), (b) (7)(C)  he below images summarize the letter.

(b) (6), (b) (7)(C)



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(b) (6), (b) (7)(C)



(b) (5)



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A document titled (b) (5) was review. (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C) provided various other documents from the 1980's and 90's pertaining to unsubstantiated allegations against the (b) (6), (b) (7)(C). None seem to indicate fraud or fall within the jurisdiction of EPA OIG. Further, even if they did fall within this office's jurisdiction, it would be well outside of the statute of limitations.

On January 20, 2022, SA (b) (6), (b) (7)(C), (b) (7)(D) coordinated with (b) (6), (b) (7)(C), (b) (7)(D), (b) (6), (b) (7)(C), Region 5, EPA, who provided additional information pertaining to (b) (6), (b) (7)(C) involvement at the Toro (b) (6), (b) (7)(C) site.

(b) (6), (b) (7)(C) provided email communication with the Minnesota Pollution Control Agency (MPCA) where they explained their involvement in the Toro site. (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

On January 24, 2022, SA (b) (6), (b) (7)(C), (b) (7)(D) coordinated with (b) (6), (b) (7)(C), EPA's (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), Superfund & Emergency Management Division, pertaining to Superfund's involvement in the Lyndale Ave Corridor site.

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(b) (6), (b) (7)(C), (b) (5)



DISPOSITION:

Based on the review of the documents provided by the complainant, and discussion with both RCRA and Superfund, there is no creditable information to believe that there was Fraud or corruption between the Toro Company and MPCA. There were additionally allegations that did not fall within the jurisdiction of EPA OIG. Further, even if they did fall within this office's jurisdiction, it would be well outside of the statute of limitations. A referral was made to EPA-CID on 25 Jan 22 with the information that may fall within their purview. As such stated above, this case will be closed at this time.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DATE: March 1, 2022

PREPARED BY: SA (b) (6), (b) (7)(C), (b) (7)(F)

CASE #: OI-HQ-2021-ADM-0077

CROSS REFERENCE #:

TITLE: (b) (6), (b) (7)(C) EPA, OCEFT (b) (6), (b) (7)(C)

CASE CLOSING REPORT

Subject(s)	Location	Other Data
(b) (6), (b) (7)(C)	(b) (6), (b) (7)(C)	N/A

VIOLATION(S):

U.S. EPA, Office of Criminal Enforcement, Forensics, and Training Conduct Policy: to wit:

- (1) Misuse of a government vehicle, in violation of OCEFT-P-006; section 3.2.2. Prohibited Uses of GOVs
- (2) Conduct Unbecoming a Law Enforcement Officer; to wit: integrity-related misconduct by engaging in off-duty criminal conduct and conduct that adversely impacts the reputation of OCEFT, in violation of OCEFT-P-003, 11(d);

ALLEGATION:

On April 21, 2021, (b) (6), (b) (7)(C) U.S. Environmental Protection Agency, Office of Criminal Enforcement, Forensics and Training, (b) (6), (b) (7)(C) was arrested by the (b) (6), (b) (7)(C) in (b) (6), (b) (7)(C) for operating government vehicle while intoxicated. At the time of (b) (6), (b) (7)(C) arrest, (b) (6), (b) (7)(C) was armed with an EPA issued firearm and was charged with misuse of a firearm.

On August 4, 2021, (b) (6), (b) (7)(C) was arrested by the (b) (6), (b) (7)(C) for operating (b) (6), (b) (7)(C) Personally Owned Vehicle while intoxicated.

FINDINGS: On December 14, 2021, (b) (6), (b) (7)(C) plead guilty to two counts of operating a motor vehicle while intoxicated and misuse of a handgun.

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The OIG identified and provided investigative information to OCEFT management sufficient to support the allegations that (b) (6), (b) (7)(C) violated OCEFT Conduct Policy covering:

- (1) Misuse of a government vehicle, in violation of OCEFT-P-006; section 3.2.2. Prohibited Uses of GOVs
- (2) Conduct Unbecoming a Law Enforcement Officer; to wit: integrity-related misconduct by engaging in off-duty criminal conduct and conduct that adversely impacts the reputation of OCEFT, in violation of OCEFT-P-003, 11(d);

As a result of the OIG investigation, OCEFT management issued removed (b) (6), (b) (7)(C) from Federal Service resulting in a cost savings of \$174,550.

DISPOSITION: Allegations Supported; Cost Savings: \$174,550.00

All Office of Investigations (OI) leads have been completed and no further OI investigative activity is warranted. This investigation is closed.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF INSPECTOR GENERAL
OFFICE OF INVESTIGATIONS

DATE: March 18, 2022

PREPARED BY: SA (b) (6), (b) (7)(C), (b) (7)(F)

CASE #: OI-HQ-2020-CFD-0079

CROSS REFERENCE #: Hotline 2020-0036

TITLE: (b) (6), (b) (7)(C), SES, (b) (6), (b) (7)(C)

CASE CLOSING REPORT

Subject(s)	Location	Other Data
(b) (6), (b) (7)(C)	Washington D.C.	(b) (6), (b) (7)(C) SES

VIOLATION:

18 U.S. Code § 208 - Acts affecting a personal financial interest

ALLEGATION:

It was alleged that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), directed a sole source contract through the Environmental Protection Agency (EPA) to (b) (6), (b) (7)(C)

FINDINGS:

The Case Agent (CA) interviewed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) told the CA that (b) (6), (b) (7)(C), (b) (5)

A contract bid was put out and (b) (6), (b) (7)(C), (b) (4) won the bid as the primary contractor; however, (b) (6), (b) (7)(C) was the sub-contractor. (b) (6), (b) (7)(C) later learned that (b) (6), (b) (7)(C) worked with (b) (6), (b) (7)(C) while employed at the (b) (6), (b) (7)(C). After the initial interview was concluded, (b) (6), (b) (7)(C) contacted the CA on the same day and provided additional details. (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) recalled a discussion with the (b) (6), (b) (7)(C) where (b) (6), (b) (7)(C) wanted OHS to oversee the contract because the optics did not look good that (b) (6), (b) (7)(C) worked with (b) (6), (b) (7)(C) years ago.

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The CA interviewed (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C) told the CA that (b) (6) suggested (b) (6), (b) (7)(C) as an option to (b) (6), (b) (7)(C) due to the work they did at (b) (6), (b) (7)(C), etc.

The CA contacted the Director of Ethics to learn if there were any ethic laws that applied to (b) (6), (b) (7)(C) because of (b) (6) previous work with (b) (6), (b) (7)(C). The Director of Ethics reported that while (b) (6) worked at (b) (6), (b) (7)(C) lobbied (b) (6), (b) (7)(C). The Director of Ethics wrote (b) (6), (b) (7)(C), (b) (5)

The CA interviewed additional EPA employees within (b) (6), (b) (7)(C) to obtain information. The interviews revealed that multiple employees were concerned with the following: 1). (b) (6), (b) (7)(C) selection of (b) (6), (b) (7)(C) 2). the transfer of funds from (b) (6), (b) (7)(C) to the working capital fund for the cybersecurity project; and 3). requesting EPA employees contact the President of (b) (6), (b) (7)(C) to speak with (b) (6), (b) (7)(C) about cybersecurity. Other employees mentioned that (b) (6), (b) (7)(C) may not have been as qualified as other companies were to perform this type of work.

The CA interviewed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) told the CA that (b) (6), (b) (7)(C) been part of conversations regarding (b) (6), (b) (7)(C) work for three years and that (b) (6), (b) (7)(C) recommended (b) (6), (b) (7)(C) use (b) (6), (b) (7)(C) because (b) (6), (b) (7)(C) worked with (b) (6), (b) (7)(C). Ultimately, the (b) (6), (b) (7)(C) did not use (b) (6), (b) (7)(C). Approximately one year later, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) decided to create a gap analysis report for water cyber security matters and wanted to use (b) (6), (b) (7)(C) to create this gap analysis report. (b) (6), (b) (7)(C) said, (b) (6), (b) (7)(C) got the impression (b) (6), (b) (7)(C) wanted to use (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) raised (b) (6), (b) (7)(C) concerns regarding the "use of a particular contractor" to (b) (6), (b) (7)(C) and the designated ethics official. (b) (6), (b) (7)(C) According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) designated ethics official did not see an ethics concern. (b) (6), (b) (7)(C) said, it seemed to be a big push to use (b) (6), (b) (7)(C) however, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) spoke with the EPA employees in the Office of Acquisitions about (b) (6), (b) (7)(C), (b) (4)

The CA interviewed (b) (6), (b) (7)(C) who said (b) (6), (b) (7)(C) was made aware staff in (b) (6), (b) (7)(C) were concerned that (b) (6), (b) (7)(C) was attempting to direct one of their contractors to subcontract cybersecurity work to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) had a conversation with (b) (6), (b) (7)(C) to let (b) (6), (b) (7)(C) know that

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directing our contractor to give work to a specific subcontractor was not allowed. According to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was aware of the contract laws and had not directed the contractor to do anything but suggested (b) (6), (b) (7)(C) given (b) (6), (b) (7)(C) knowledge of their experience and capability in this area.

The CA interviewed (b) (6), (b) (7)(C) Office of Acquisitions (OA). (b) (6), (b) (7)(C) told the CA that (b) (6), (b) (7)(C) met with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) asked general questions about the contracting process. According to (b) (6), (b) (7)(C), these questions centered around how much time it takes to get a contract in place and about the competitive process. (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C) also informed the CA that on October 1, 2019, (b) (6), (b) (7)(C) met with the following (b) (6), (b) (7)(C) staff members: (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and (b) (6), (b) (7)(C), to discuss concerns they had regarding the procurement process. (b) (6), (b) (7)(C) said during this meeting it was explained to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had a staff member that was very concerned about an (b) (6), (b) (7)(C) political senior manager insisting that a particular contract requirement be awarded to a specific contractor. (b) (6), (b) (7)(C), (b) (5)

During this conversation the names of the prime contractor, intended subcontractor, political senior manager, and the pressured staff member were not disclosed and (b) (6), (b) (7)(C) did not see clear-cut wrongdoing on the part of the political senior manager.

The CA interviewed (b) (6), (b) (7)(C) EPA, regarding the working capital fund and (b) (6), (b) (7)(C). During the interview (b) (6), (b) (7)(C) told the CA (b) (6), (b) (7)(C) served as the (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) worked with (b) (6), (b) (7)(C), (b) (5). (b) (6), (b) (7)(C) said the work orders of magnitude and official cost estimates were submitted to (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) review and approval and (b) (6), (b) (7)(C) contacted the account managers (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) to request additional funding to the service agreements. (b) (6), (b) (7)(C) said the EPA III, Task Order II contract was already in place and the technical consultant clause of this contract allowed the customer, (b) (6), (b) (7)(C), to access Working Capital Funds services for this contract. The working capital fund is used to help EPA customers with whatever they may need. If the scope of work is written into the contract, the technical consultant clause of this contract will allow (b) (6), (b) (7)(C) to execute the work for the EPA. According to (b) (6), (b) (7)(C), there is a technical consultant clause in this contract.

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(b) (6), (b) (7)(C), (b) (7)(E), (b) (5)

On March 4, 2022, the CA reviewed the file provided by (b) (6), (b) (7)(C). After the file review, the CA did not see any documents containing SSN's and bank account router information that was previously mentioned by (b) (6), (b) (7)(C). The CA concluded there was no available evidence that would support the allegation that (b) (6), (b) (7)(C) directed a sole source contract through the EPA's (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C).

DISPOSITION: Unsupported: Closed

Based upon the aforementioned information, the allegation is unsupported. (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C) is no longer an EPA employee. As there are no further investigative steps to be taken, the case agent recommends closing this case.

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United States Environmental Protection Agency
Office of Inspector General
Administrative Investigations Directorate

CASE CLOSING REPORT

CASE NO. AID-00003

CROSS REFERENCE NO. Hotline # 2020-0126
OI-CH-2021-ADM-0029

CASE TITLE: (b) (6), (b) (7)(C)

CLOSING: Information in this report is based on the results of investigative activity regarding the allegations documented herein.

Date Reported: March 28, 2021

Investigated By: (b) (6), (b) (7)(C)
OI Special Agent (b) (6), (b) (7)(C)

Subject(s): (b) (6), (b) (7)(C)

Allegation(s): We initiated this investigation based on a December 2020 referral from EPA OIG's then Office of Audit and Evaluation alleging that the subject, a political appointee, violated a U.S. Department of Justice (DOJ) confidentiality agreement and provided inside information to a municipal defendant in an EPA enforcement case (b) (6), (b) (7)(C).

Summary of Investigative Findings: We conducted interviews with staff from the Office of Civil Enforcement (OCE) within EPA's Office of Enforcement and Compliance Assurance (OECA), as well as the subject. We also reviewed the subject's email correspondence, and other correspondence provided by OCE staff. As outlined below, AID determined that the allegations were not supported.

OCE staff testified that the EPA has an (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). The EPA is represented by DOJ's Environmental Enforcement Section in the Environment and Natural Resources Division. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was a schedule C political appointee who served as the (b) (6), (b) (7)(C) starting in or around (b) (6), (b) (7)(C). In approximately (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) was assigned by management to work on the (b) (6), (b) (7)(C) matter. At that time, the EPA case team (which included staff from OCE headquarters and Region 5) and DOJ were coordinating with (b) (6), (b) (7)(C) to negotiate (b) (6), (b) (7)(C) with (b) (6), (b) (7)(C). The parties' negotiations were stalled (b) (6), (b) (7)(C).

² The EPA case team and DOJ believed the violations (b) (5) and that the

¹ (b) (6), (b) (7)(C) was interviewed by AID on (b) (6), (b) (7)(C) 2021 and subsequently left the agency on or about (b) (6), (b) (7)(C) 2021.

² NPDES permit program addresses water pollution by regulating point sources that discharge pollutants to waters of the United States. See <https://www.epa.gov/npdes>.

(b) (5) was not possible because (b) (5). According to (b) (6), (b) (7)(C), objective was to see whether there were flexibilities that could be incorporated (b) (5) that would satisfy both sides.

OCE staff testified that (b) (6), (b) (7)(C) participation in the (b) (6), (b) (7)(C) matter was unusual (b) (6), (b) (7)(C), (b) (5). OCE staff stated that (b) (6), (b) (7)(C) would attend and participate in internal team calls and in meetings between (b) (6), (b) (7)(C) and DOJ. (b) (6), (b) (7)(C) would also appear to brief the Region 5 Administrator on the (b) (6), (b) (7)(C) matter. OCE staff believed, but did not know for sure, that (b) (6), (b) (7)(C) was having one-on-one talks with parties to the enforcement proceeding. OCE staff characterized (b) (6), (b) (7)(C) alleged one-on-one talks as discussing potential ideas and presenting those back to the EPA/DOJ case team, rather than conducting actual settlement negotiations. Such direct communications with parties went beyond what was typical in enforcement matters but did not necessarily violate any agency policy or procedure that OCE staff were aware of. The OCE staff could not identify any specific examples of sensitive enforcement information being disclosed to the defendant. (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C) denied sharing sensitive enforcement information with (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) admitted that (b) (6), (b) (7)(C) would sometimes receive calls from (b) (6), (b) (7)(C) consultant, but these conversations would generally address negotiation logistics (e.g. whether setting up a meeting with both sides' technical experts would be appropriate, etc.). (b) (6), (b) (7)(C) would give (b) (6), (b) (7)(C) opinion but would defer all coordination, as well as substantive case inquiries to the assigned DOJ attorney. (b) (6), (b) (7)(C) further testified that (b) (6), (b) (7)(C) would notify the DOJ attorney of (b) (6), (b) (7)(C) afterward, usually via email. A review of (b) (6), (b) (7)(C) emails corroborated (b) (6), (b) (7)(C) testimony.

AID confirmed that during the time of (b) (6), (b) (7)(C) participation on the (b) (6), (b) (7)(C) matter, a confidentiality agreement between the EPA and the (b) (6), (b) (7)(C) was in place establishing that written and oral communications between the parties relating to the (b) (6), (b) (7)(C) matter were to remain confidential.³ Additionally, a March 8, 2006 OECA memorandum titled "Restrictions on Communicating with Outside Parties Regarding Enforcement Actions" was also in effect. The memorandum outlines certain information that EPA employees should not share with outside parties, including strategy and tactics of settlement negotiations. The memorandum also states that remedies being sought in settlement should be confined to government personnel involved in the enforcement matter and the opposing party.

As noted above, none of the OCE staff could articulate a situation where they believed enforcement sensitive information had been disclosed to (b) (6), (b) (7)(C). While (b) (6), (b) (7)(C) admitted to having some direct conversations with (b) (6), (b) (7)(C), the mere occurrence of these direct talks, nor the alleged subject matter, does not run afoul of the confidentiality agreement or OECA's guidance on communications with outside parties.

Disposition: Based upon the aforementioned information, AID determined that the allegations were unsupported. Accordingly, it is recommended that this case be closed.

³ (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) had never seen a copy of the confidentiality agreement. Notably, OCE staff were similarly unfamiliar with the confidentiality agreement and its scope.

Prepared By: (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460



OFFICE OF
INSPECTOR GENERAL

December 28, 2021

MEMORANDUM

SUBJECT: Management Implication Report: Annual Performance Rating of Senior Executive Service Employees at U.S. Chemical Safety and Hazard Investigation Board

FROM: Paul H. Bergstrand, Acting Assistant Inspector General
Office of Special Review and Evaluation

TO: Dr. Katherine A. Lemos, Chairperson and Chief Executive Officer
U.S. Chemical Safety and Hazard Investigation Board

Purpose: The U.S. Environmental Protection Agency's Office of Inspector General, Administrative Investigations Directorate, has identified several concerns regarding the U.S. Chemical Safety and Hazard Investigation Board's compliance with U.S. Office of Personnel Management regulations and CSB board orders related to Senior Executive Service employee annual performance appraisals for appraisal years 2020 and 2021. This report outlines our investigative findings to enable the CSB to take appropriate corrective action.

Background: The CSB is required to assign an annual summary rating to each SES employee at the end of each appraisal period. See 5 C.F.R. §§ 430.305(a)(4) and 430.308(b); CSB Board Order 29 § 8(h)(1). Per CSB Board Order 29 § 8(h)(1), the appraisal period for SES employees at the CSB is July 1 through June 30.¹

The CSB's SES appraisal system involves several steps. At the beginning of each appraisal period, the SES employee's first-line supervisor must provide the employee with a performance plan. CSB Board Order 29 §§ 6(o), 7(a), and 8. For each appraisal period, the first-line supervisor must also provide an initial summary rating. CSB Board Order 29 § 6(m)–(n). The initial summary rating is then submitted to a Performance Review Board appointed by the CSB chairperson. CSB Board Order 29 §§ 6(m)–(n), 6(k), and 12; CSB Board Order 48 § 6(j). The PRB must review the initial summary rating and make a recommendation to the CSB chairperson regarding the SES employee's performance. See 5 C.F.R. § 430.309(e)(3); CSB Board Order 29 §§ 6(k) and 12. After taking into consideration the PRB's recommendation, the CSB chairperson determines the annual summary rating, which is the official rating of record. CSB Board Order 29 §§ 6(a), 6(m), and 10(e); see also 5 C.F.R. § 430.309(e)(4).

The annual summary rating must be communicated to the SES employee in writing, normally within three months of the end of the appraisal period. CSB Board Order 29 § 10(e); *OPM Senior Executive*

¹ The CSB board orders provide conflicting guidance regarding the SES appraisal period. Although CSB Board Order 29 states that the period runs from July 1 through June 30, CSB Board Order 48 lists the period as October 1 through September 30. CSB Board Order 48 § 6(d). For appraisal year 2020, the CSB used July 1 to June 30 as the appraisal period for SES employees, and we found no evidence that the CSB made a determination to change the SES appraisal period for 2021.

Service Desk Guide, pages 4-13 and 4-16. Because the CSB appraisal period ends June 30, the annual summary rating should be provided to each SES employee by September 30 of each year. Pay adjustments and performance awards for CSB SES employees are based on their annual summary ratings, and SES employees who receive an “outstanding” rating must be considered for an annual pay increase. CSB Board Order 48 § 9(a).

The CSB chairperson is responsible for implementing and administering the SES performance management system. CSB Board Order 29 § 7(a).

By statute and CSB board order, the CSB may not take any performance appraisal actions within 120 days after the beginning of a new presidential administration. See 5 U.S.C. § 4314(b)(1)(C); CSB Board Order 29 § 8(h)(4); *OPM Senior Executive Service Desk Guide*, page 4-10.

Problems Identified: For the appraisal period ending June 30, 2020, the CSB did not provide final annual performance ratings to either of the two SES employees it had at the time (referred to here as Employee A and Employee B).

The CSB chairperson, who served as Employee A’s first-line supervisor, did not provide Employee A with an initial or annual summary rating by September 30, 2020, or by the start of the new presidential administration on January 20, 2021. On February 3, 2021, the CSB chairperson issued a memorandum purporting to delegate to the CSB’s acting managing director the responsibility to serve as the “Reviewing Official for GS and SES employees” under CSB Board Order 10. However, CSB Board Order 10 governs performance appraisals only for General Schedule employees and provides limited authority for the chairperson to delegate his or her responsibilities.² Under CSB Board Order 29 and OPM regulations, the first-line supervisor is responsible for providing the initial summary ratings for SES employees, and the chairperson is responsible for the annual summary ratings. CSB Board Order 29 § 6(m)–(n); 5 C.F.R. § 430.309(e)(1). There is no authority under CSB Board Order 29 for the chairperson to delegate the responsibilities for SES employee ratings.

On March 31, 2021, the acting managing director met with Employee A to discuss Employee A’s “performance review” for the 2020 appraisal year and transmitted a summary of the meeting, including a suggested rating level, to the chairperson and the Human Resources Department. In doing so, the CSB contravened the 120-day moratorium period on any performance appraisal actions set forth in 5 U.S.C. § 4314(b)(1)(C). No initial summary rating was ever finalized, however. The CSB took no further action on a rating until September 10, 2021, when the acting managing director provided Employee A with an unsigned draft annual summary rating for 2020, despite the fact that no initial summary rating had been finalized and no PRB had been appointed. The CSB chairperson never provided Employee A with a signed annual summary rating for 2020. In addition, Employee A never received a signed performance plan, an initial summary rating, or an annual summary rating for the 2021 appraisal period.

Employee B received an initial summary rating from the outgoing interim executive and administrative authority in April 2020, but the CSB had no PRB in place at the end of the June 30, 2020, appraisal period to review the initial summary rating.³ Despite follow-up inquiries by Employee B, the CSB never

² According to CSB Board Order 10, the chairperson serves as the reviewing official for any General Schedule employee reporting directly to the chairperson; this responsibility may be delegated only to another board member. CSB Board Order 10 § 6(n).

³ The PRB lost its quorum with the retirement of one of its members on June 30, 2020. As of December 2021, the CSB has not had a PRB since June 2020.

established a PRB or submitted Employee B's initial summary rating to a PRB. In addition, when Employee B separated from the CSB, the CSB did not provide the annual summary rating as required for departing employees under CSB Board Order 29 § 10(b).

Because the CSB did not provide annual summary ratings for the 2020 or 2021 appraisal periods for Employee A, Employee A could not be considered for a pay increase or performance award. Employee B, who received an initial summary rating [REDACTED] for the 2020 appraisal period, could likewise not be considered for a performance-based pay increase or performance award. Employee B also reported that [REDACTED]

My office is notifying you of these problems so that the CSB can take appropriate steps to ensure compliance with the requirement to provide performance ratings to SES employees on an annual basis, including for appraisal years 2020 and 2021.⁴ Please inform my office of any corrective action taken by the CSB in relation to this matter.

Should you have any questions regarding this report, please do not hesitate to contact Kristin M. Kafka, Deputy Assistant Inspector General for Administrative Investigations, at (202) [REDACTED].

cc: Sean W. O'Donnell, Inspector General

Katherine Trimble, Assistant Inspector General for Audit

David LaCerte, Senior Advisor, Executive Counsel, and Acting Managing Director

Danielle R. Opalka, Acting Deputy Associate Director, Senior Executive Services and Performance Management, U.S. Office of Personnel Management

⁴ The OIG understands that, on or about September 24, 2021, after being notified of the OIG's investigation, the CSB engaged an outside human resources consultant to provide an assessment of the CSB's SES performance appraisal system. We also understand that the CSB hired a new Human Resources director in November 2021.